



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 19, 2022

IN THE MATTER OF:

Appeal Board No. 623729

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective August 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed May 16, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer, a sandwich shop, as a full-time assistant manager from October 15, 2018 until August 20, 2021. In early August 2021, the employer's district manager, DT, informed the claimant that he received a notice from the sheriff's department stating that his wages were going to be garnished because he had an outstanding debt. The claimant told DT that he had no outstanding debt and the garnishment did not pertain to him. No wages were garnished from the claimant's paycheck.

On August 20, 2021, DT told the claimant "sorry, but things aren't working

out. We have to let you go, but you can finish out the week." The claimant was scheduled to work on August 21, 2021 and August 22, 2022. He notified the employer of his absence on August 21, 2021, because he was not feeling well after learning that he was fired from his employment. On August 22, 2021, the store was closed due to inclement weather. The claimant did not give the employer a verbal or a written two-weeks' notice that he was resigning.

OPINION: The credible evidence establishes that the claimant did not voluntarily leave his employment. We credit the claimant's testimony that he was discharged over the employer's less credible version that he resigned. In resolving credibility, we note that that employer's managing member stated in a Summary of Statement that the claimant gave both him and DT two-weeks' notice in writing and that claimant had indicated in his written resignation that he was moving on to do other things. However, at the hearing, the member admitted that the claimant did not submit any written resignation. As the claimant was discharged, we conclude that the claimant did not voluntarily leave his employment.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective August 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER